

CHAPTER 8.18

Control of Smoking

8.18.010 Legislative declaration.

The City hereby finds and determines that it is in the best interest of the people of this City to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, food service establishments, places of employment, and certain outdoor recreation areas. The City further finds and determines that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the City hereby declares that the purpose of this Chapter is to preserve and improve the health, comfort and environment of the people of this City by limiting exposure to tobacco smoke. (Ord. 427-08; Ord. 374-06; Ord. 1075-97)

8.18.020 Definitions.

As used in this Chapter, unless the context otherwise requires:

Auditorium means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways or lobbies adjacent thereto.

Bar means any indoor area that is operated and licensed under Article 47 of Title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

Cigar-tobacco bar means a bar that, in the calendar year ending December 31, 2005, generated at least five percent (5%) or more of its total annual gross income or fifty thousand dollars (\$50,000.00) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent (5%) of its total annual gross income or fifty thousand dollars (\$50,000.00) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.

Employee means any person who:

- a. Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
- b. Provides uncompensated work or services to a business or nonprofit entity.

Employee includes every person described in Subparagraph a. of this definition, regardless of whether such person is referred to as an employee, contractor, independent contractor or volunteer or by any other designation or title.

Employer means any person, partnership, association, corporation or nonprofit entity that employs one (1) or more persons. *Employer* includes, without limitation, the legislative, executive

and judicial branches of state government; any county, city and county, city or town or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission or agency; or any other separate corporate instrumentality or unit of state or local government.

Entryway means the outside of the front or main doorway leading into a building or facility that is not exempted from this Section. *Entryway* also includes the area of public or private property within a specified radius outside of the doorway. The specified radius shall be fifteen (15) feet.

Environmental tobacco smoke, ETS or secondhand smoke means the complex mixture formed from the escaping smoke or a burning tobacco product, also known as "sidestream smoke," and smoke exhaled by the smoker.

Food service establishment means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The terms includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

Indoor area means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

Place of employment means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

Public building means any building owned or operated by:

- a. The state, including the legislative, executive and judicial branches of state government;
- b. Any county, city and county, city or town, or instrumentality thereof, or any other political subdivision of the State, a special district, an authority, a commission or an agency; or
- c. Any other separate corporate instrumentality or unit of states or local government.

Public meeting means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law.

Smoke-free working area means an indoor area in a place of employment where smoking is prohibited under this Chapter.

Smoking means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

Tobacco means cigarettes, cigars, cheroots, stogies and periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product that is packaged for smoking.

Tobacco business means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale, manufacture or promotion of tobacco, tobacco products or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

Work area means an area in a place of employment where one (1) or more employees are routinely assigned and perform services for or on behalf of their employer. (Ord. 427-08; Ord. 374-06; Ord. 1075-97)

8.18.030 General smoking restrictions.

A. Except as provided in Section 8.18.040, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any indoor area or specified outdoor recreation areas, including but not limited to:

1. Public meeting places;
2. Elevators;
3. Government-owned and/or operated means of mass transportation, including but not limited to buses, vans and trains;
4. Taxicabs and limousines;
5. Grocery stores;
6. Gymnasiums;
7. Jury waiting and deliberation rooms;
8. Courtrooms;
9. Child day care facilities;
10. Health care facilities, including hospitals, health care clinics, doctor's offices and other health care related facilities;
11.
 - a. Any place of employment that is not exempted.
 - b. In the case of employers who own facilities otherwise exempted from this Chapter, such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke.
12. Food service establishments;
13. Bars;
14. Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
15. Indoor sports arenas;

16. Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-unit residential facilities;

17. Restrooms, lobbies, hallways and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests;

18. Bowling alleys;

19. Billiard or pool halls;

20. Facilities in which games of chance are conducted;

21. The common areas of retirement facilities, publicly owned housing facilities and nursing homes, not including any resident's private residential quarters;

22. Public buildings;

23. Auditoria;

24. Theaters;

25. Museums;

26. Libraries;

27. To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and non-public schools;

28. Other educational and vocational institutions;

29. The entryways of all buildings and facilities listed in Paragraphs (1) through (28) of this Subsection; and

30. Within the entire fenced area of the Riverside Park Ball Fields.

B. A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and at least four (4) inches by six (6) inches in size, stating: "Smoking allowed. Children under eighteen (18) years of age must be accompanied by a parent or guardian." (Ord. 374-06)

8.18.040 Exceptions to smoking restrictions.

This Chapter shall not apply to:

A. Private homes, private residences and private automobiles; except that this Chapter shall apply if any such home, residence or vehicle is being used for child care or day care or if any private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

B. Limousines under private hire;

C. A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%);

- D. Any retail tobacco business;
- E. A cigar-tobacco bar;
- F. An airport smoking concession;
- G. The outdoor area of any business;
- H. A place of employment that is not open to the public and that is under the control of an employer that employs three (3) or fewer employees;
- I. A private, nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars (\$50,000.00). (Ord. 374-06)

8.18.050 Optional prohibitions.

A. The owner or manager of any place not specifically listed in Section 8.18.030 above, including a place otherwise exempted under Section 8.18.040 above, may post signs prohibiting smoking or providing smoking and non-smoking areas. Such posting shall have the effect of including such place, or the designated non-smoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this Chapter.

B. If the owner or manager of a place not specifically listed in Section 8.18.030, including a place otherwise exempted under Section 8.18.040, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 8.18.030(A)(11)(b), the owner or manager shall post a sign or signs in the smoke-free work area as provided in Subsection A above. (Ord. 374-06)

8.18.060 Unlawful acts – penalty – disposition of fines and surcharges.

A. It is unlawful for a person who owns, manages, operates or otherwise controls the use of a premises subject to this Chapter to violate any provision of this Chapter.

B. It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Chapter.

C. A person who violates this Chapter, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars (\$200.00) for a first violation within a calendar year, a fine not to exceed three hundred dollars (\$300.00) for a second violation within a calendar year, and a fine not to exceed five hundred dollars (\$500.00) for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation. (Ord. 374-06; Ord. 1075-97)